IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

WEDNESDAY, THE 12TH DECEMBER 2007 / 21ST AGRAHAYANA 1929

Crl.MC.No. 621 of 2004()

(CRIME NO.59/2004 OF NOORANAD POLICE STATION).

PETITIONER:

T.RADHA, ADVOCATE, MAVELIKKARA RESIDING
AT "SACHU'S" KARIMUKAL, KOMALLOOR P.O.
CHUNAKKARA.

BY ADV. SRI.K.RAMAKUMAR
SRI.T.RAMPRASAD UNNI

RESPONDENTS: 1
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1. STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

2. THE SUB INSPECTOR OF POLICE,
NOORNADU POLICE STATION, NOORUNADU,
ALEPPEY DISTRICT.

BY PUBLIC PROSECUTOR SRI C.M. KAMMAPPU.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD
ON 12-12-2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.M.A NO.2899/2004 IN CRL.M.C.NO.621/2004

DISMISSED.

12-12-2007 SD/- V.K.MOHANAN, JUDGE.

//TRUE COPY//

V.K.MOHANAN,J.

CRL.M.C.N0.621 OF 2004

Dated, 12th December, 2007.

ORDER

Petitioner who is the Ist accused in crime No.59 of 2004 of Nooranad Police station approached this Court with a prayer to quash Annexure-A F.I.R. and all further proceedings thereon. According to the petitioner, no offence is disclosed against the petitioner and she is falsely implicated in the above crime at the instance of certain police officers who are inimical towards her. Thus according to the petitioner it is a clear abuse of the powers of the court and that the F.I.R is liable to be quashed.

2. Crime No.59/2004 is registered in the Nooranad Police station with respect to the offences punishable under sections 114, 353, and 506 read with section 34 of I.P.C. on the allegation that the accused, 4 in number, with the intention to prevent the construction of Children's park in the southern side of Charummoodu junction, Palathadam junction, near the radiokioska and thereby prevented the government

servant from discharging his official duty, at about 4.15 p.m. on 20-2-2004, Ist accused abetted the other accused not to do their work and thereby A2 to A4 prevented the public servant from discharging his duty and he was threatened and thereby the accused have committed the above offences. Accordingly on the basis of the F.I.Statement lodged by one Vipinendran who was working as the Special Grade Secretary of Thamarakulam Grama Panchayat, the above crime was registered at about 4.45 p.m. on 20-2-2004. According to the petitioner, the said allegations are false and the petitioner is implicated due to extraneous considerations and enmity maintained by the police authorities as the petitioner was not in their good book.

3. I have heard the counsel for the petitioner as well as the learned Public Prosecutor.

4. Counsel appearing for the petitioner vehemently argued that no offence under section 506 of IPC is disclosed against the petitioner and therefore there is no justification in directing the petitioner to undergo the ordeal of trial under

section 506 of IPC. It is further pointed out especially that the time of offence was only at 4.15 p.m on 20-2-2004 and within 30 minutes F.I.R. has been registered and the F.I.R. reached in the court at 4.45 p.m in an unusual speed and this hastiness itself is sufficient to hold the falsity of the offence registered against the petitioner. It was also pointed out by the counsel that going by the F.I.S. the petitioner was not at the place of occurrence while the first part of the incident took place. Further it is argued that the police has no complaint with respect to the incident that took place prior to the arrival of the petitioner at the spot but the police has twisted the case such as that the whole incident took place after arrival of the petitioner at the spot. It is true that the petitioner did not admit her presence at the spot before 4.15 p.m. On the basis of the allegations contained in the F.I.S it is submitted that those story of the police is not believable. It is also submitted by the counsel for the petitioner that no overt act is alleged against the petitioner so as to attract the ingredients of Section 353 or 506 of IPC. At this stage, I am not

proposed to enter into a finding regarding the allegations contained in the F.I.S. against the petitioner and also the contentions raised as the same is likely to affect either the prosecution or the defence. But on a perusal of the F.I.R. as well as F.I.S., I am of the view that at this stage it cannot be said that the allegations contained in the FIR as well as FIS do not constitute the offence alleged against the petitioner.

5. Going by the statements contained in the memorandum of this Crl.M.C. and the arguments advanced on behalf of the petitioner, it appears to me that all such allegations and arguments can be evaluated only at the time of appreciation of evidence which are yet to be collected through investigation and to be adduced at the time of trial.

6. In this juncture it is relevant to note that the investigation is in a standstill because of the stay order passed by this Court and after registration of the F.I.R., no step was taken further towards investigation. Only after investigation even the police will be in a position to form their

opinion as to whether evidence collected are sufficient to lay charge against the petitioner. The sufficiency of the evidence or the materials in support of the offence alleged are to be scrutinized at the time of trial and not in a petition under section 482 Cr.P.C.. Therefore, there is no justification to interfere with annexure-A F.I.R. and the further investigation of the case at this stage.

7. It is pointed out that the petitioner herein who is the Ist accused in the above crime is an advocate having more than 15 years of practice at Mavelikkara Court. Even according to the FIS, the only allegation against the petitioner/A1 is that while the de facto complainant was talking to the other accused, the petitioner - Advocate Smt.Radha reached the spot in a car and she approached them and asked Vishwambharan that the work shall not be allowed to carry on at any coast and should prevent the work. This is the allegation against the petitioner and there is nothing to infer that the petitioner had threatened the workers so as to create any kind of threat in the minds of the prosecution witnesses

or the de facto complainant so as to attract section 506 of I.P.C. Therefore, I am of the view that no offence under section 506 will lie against the petitioner on the basis of the averments contained in the FIS. I am sure that after investigation if no offence under section 506 is disclosed, the police will definitely delete that offence. But of course, it has to be noted that investigation is in the infant stage and after collecting the materials and evidence if the police is of opinion that materials are sufficient and available for laying the charge under section 506, the police is also free to proceed in that direction.

8. In the light of the above discussion and the facts and circumstances involved in the case, there is no merit in the CrilM.C. and the same is dismissed but subject to the above observation.

V.K.MOHANAN, JUDGE.

kvm/-

kvm/-

V.K.MOHANAN, J.

No....

Judgment/Order

Dated: